

U.S. Environmental Protection Agency
Office of Pollution Prevention and Toxics

INTERPRETIVE GUIDANCE FOR THE FEDERAL PROGRAM
TSCA SECTIONS 402/403

FINAL 12/15/99

Q/A(1) Homeowner Exemption

“Scope and Applicability”

745.220(b) This subpart applies to all individuals and firms who are engaged in lead-based paint activities as defined in Sec. 745.223, except persons who perform these activities within residential dwellings that they own, unless the residential dwelling is occupied by a person or persons other than the owner or the owner's immediate family while these activities are being performed, or a child residing in the building has been identified as having an elevated blood lead level. This subpart applies only in those States or Indian Country that do not have an authorized State or Tribal program pursuant to Sec. 745.324 of subpart Q.

745.223 Definitions

“Child-occupied facility” means a building, or portion of a building, constructed prior to 1978, visited regularly by the same child, 6 years of age or under, on at least two different days within any week (Sunday through Saturday period), provided that each day's visit lasts at least 3 hours and the combined weekly visit lasts at least 6 hours, and the combined annual visits last at least 60 hours. Child-occupied facilities may include, but are not limited to, day-care centers, preschools and kindergarten classrooms.

“Elevated blood lead level (EBL)” means an excessive absorption of lead that is a confirmed concentration of lead in whole blood of 20 Fg/dl (micrograms of lead per deciliter of whole blood) for a single venous test or of 15-19 Fg/dl in two consecutive tests taken 3 to 4 months apart.

Q1: Can a rental property owner perform lead abatement on unoccupied residential property without meeting the TSCA section 402 training and certification requirements at 40 CFR Part 745 Subpart L?

A1: No. To qualify for the “Homeowner Exemption” (found in 745.220(b)) from the 40 CFR Part 745 Subpart L requirements for training and certification, a person must meet the following three criteria:

1. The person is the owner of the residential dwelling.
2. The residential dwelling is occupied by the owner or the owner's immediate family.
3. A child with an elevated blood lead level (EBL) is not residing in or occupying the residential dwelling.

The exclusion in 745.220(b) is strictly intended to cover homeowners performing lead-based paint activities in their own homes. Whether the property is unoccupied or occupied by someone other than the owner or the owner's immediate family at the time the lead-based paint

activities are performed does not affect the applicability of the exclusion. The second criterion above is intended to exclude rental property. The exemption would not apply to homeowners performing lead-based paint activities in a house they owned and rented out to others. Additionally, the “Homeowner Exemption” does not apply to a homeowner’s residence when there is an EBL child occupying the house. This third criterion was added in response to public comments on the proposed rule. The restriction was intended to protect the most sensitive populations, children with elevated blood lead levels, from potential lead exposure during lead abatements conducted by untrained homeowners. Therefore, landlords would only be eligible for the Homeowner Exemption when they meet all of the above criteria.

Example:

Mr. Smith owns Houses A and B, lives in House A, and rents out House B. He would be eligible for the Homeowner Exemption under 745.220(b) if he abated House A and did not have an EBL child living in House A.

Mr. Smith would not be eligible for the Homeowner Exemption if he abated House B, because he and/or his immediate family are not residing in House B. Even if Mr. Smith relocated the tenants during the abatement or waited to do the abatement when House B was between rentals, he still would not be eligible for the Homeowner Exemption for House B.

Q2: Does the “Homeowner Exemption” apply in situations where a homeowner is conducting an abatement in his home and has an EBL child who spends time at the home but officially resides in another home?

A2: If an EBL child spends an amount of time in the home that would meet the definition of “child-occupied facility” at 745.223, a homeowner conducting an abatement on that home would not be eligible for the “Homeowner Exemption” under 745.220(b). However, if an EBL child spends an amount of time in the home that is less than the time required in the definition of “child-occupied facility,” a homeowner would be eligible for the “Homeowner Exemption.”

Q3: If a person purchases a house and plans to conduct a lead abatement himself before moving his family into the house, is this person eligible for the “Homeowner Exemption”?

A3: The exclusion in 745.220(b) applies to homeowners performing lead-based paint activities in their own homes. If the owner intends to use the home as a residence for himself or his immediate family after the abatement, EPA believes that he should be eligible for the “Homeowner Exemption.”